

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.8330 OF 2007

AND

M.P.NO.1 OF 2007

C.Kanagasabapathy

.. Petitioner

Vs.

1.The Director of Town Panchayat,
Kuralagam,
Chennai-600 108.

2.The Assistant Director of Town
Panchayat,
Sivagangai,
Sibagangai District.

3.The Executive Officer,
Selection Grade Town Panchayat,
Manamadurai,
Sivagangai District.

.. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to direct the respondents to absorb the applicant in the regular time scale in the cadre of Fitter Grade-I, from the date of his initial appointment with effect from 9.7.1985 and consequently, to count the service rendered in the Tamil Nadu Water Supply and Drainage Board with effect from 10.3.1981 to 9.7.1985 for the purpose of pension and award other eligible benefits accrued based on the regular absorption in the cadre of Fitter Grade-I.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents: Mr.S.Gopinathan, AGP

ORDER

This writ petition was taken on file on transfer of O.A.No.4990 of 2002 on the file of the Tamil Nadu Administrative Tribunal, Chennai.

2.The contents of the petition along with the materials available are perused. The court heard the learned counsel for the petitioner and also the learned counsel for the respondents.

3. Advancing arguments on behalf of the petitioner, the learned counsel would submit that the petitioner is 57 years old at the time of filing of the petition; that in the year 1981, his name was sponsored by the employment exchange for absorption for employment in the Tamil Nadu Water Supply and Drainage Board; that he was selected and appointed as Fitter Grade I on 10.3.1981 on daily wage basis. While he was continuing in service, he was surrendered to the third respondent Town Panchayat, for which no willingness or consent was obtained; that on the contrary, he made an objection for such surrender; that however, he was working under the third respondent Town Panchayat and he has been occupying the quarters allotted to him as daily wage earner, though he was fully qualified to the post of Grade-I Fitter; that proposals were sent by the third respondent on 30.08.1985 to the Assistant Director of Town Panchayat, Sivaganga, seeking to sanction the post of two electricians, one pipeline fitter, one fitter and two watchman; that the said proposal was endorsed by the Collector of Sivaganga in his proceedings, dated 20.10.1985 to the Director of Town Panchayat, the first respondent herein; that though the petitioner made number of representations to the authorities to regularise his service, it was not done; that a Government Order came to be passed in favour of the daily wage earner to absorb them into regular vacancies meant for direct recruitment based on their educational qualifications in the year 1999; that G.O.Ms.No.125, Municipal Administration and Water Supply Department, dated 27.5.1999, has been issued to bring the NMRs working in the Town Panchayats continuously on the crucial date of 31.12.1996; that thousands of NMRs were absorbed in the year 1999; that the third respondent brought the applicant in the cadre of water maintenance in the consolidated pay of Rs.1000/- on 28.2.2001 with effect from 1.3.2001 and that the family circumstances compelled the petitioner to join in that post and under the G.O., if a person in the cadre of consolidated pay is completed three years only, he will be brought into the regular time scale, but the applicant got only one year of service and that if his service from 1985 was taken into consideration for regularisation, he should have got all the benefits and under these circumstances, suitable directions have got to be issued to the respondents for regularisation and also for further payment.

4. The court heard the learned counsel for the respondents on the above contentions.

5. After doing so, the court is of the considered opinion that the petitioner is not entitled to have the relief. It is not in controversy that the petitioner was working as Fitter Grade-I on 10.3.1981 on daily wage basis in the Tamil Nadu Water Supply and Drainage Board. From 1985 onwards, he has been working as daily wage earner under the third respondent Town Panchayat. The contention put forth that he was handed over by the Tamil Nadu Water Supply and Drainage Board to the Panchayat despite his objections, cannot be countenanced even for a moment for the simple reason that he has been occupying the quarters of the third respondent as daily wage earner for all along in the past. The G.O. came to be passed in the year

1999 to regularise the NMRs and to absorb them. Concededly, the G.O. stipulates the period of three years of service. Therefore, the G.O. was never given retrospective effect. The petitioner was working for consolidated payment of Rs.1000/- under the third respondent. Even the contention of the petitioner was that a proposal was forwarded, but nowhere it is stated that the proposal was accepted and the posts were sanctioned.

6.The grievance of the petitioner that he was not regularised cannot be countenanced, since he could not satisfy the conditions under the G.O. either or the post was not available for regularisation. Therefore, it would be quite clear that the petitioner seeks regularisation of service of his post, which was not sanctioned either or available at that time. Under these circumstances, the contentions of the petitioner that he should be regularised from 1985 and giving effect to the G.O. of the year 1999, benefits should be given, cannot be countenanced, though attractive at the first instance. The petition does not carry any merit whatsoever both factually and legally. Under these circumstances, it requires an order of dismissal. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected MP is also dismissed.

Vvk

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

- 1.The Director of Town Panchayat,
Kuralagam,
Chennai-600 108.
 - 2.The Assistant Director of Town
Panchayat,
Sivagangai,
Sibagangai District.
 - 3.The Executive Officer,
Selection Grade Town Panchayat,
Manamadurai,
Sivagangai District.
- 1 cc to the Government Pleader, SR.72786
1 cc to Mr.P.I.Thirumoorthy, Advocate, SR.78083

jp (co)